
United States
4
Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON,
T. M. THOMPSON, MANUEL FERNANDEZ,
J. RODRIGUES, A. F. AWORT, MARK
KOBZ, R. REDD, G. H. MARSH, C. CARL-
SON, T. NILSEN, JAMES McLENNAN,
EVERT SEPPA, FRED TAUCHER, JOHN
ANDERSON, J. W. JAKOBSEN, E. C. HAN-
SEN, J. B. NORMAN, K. K. POLLARD, and
O. LUND,
Appellees.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED
JUN 1 1927
F. D. MONCKTON,
CLERK.

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For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
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vs.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. CASA, JOHN NELSON,
T. M. THOMPSON, MANUEL FERNANDEZ,
J. RODRIGUES, A. F. AWORT,
MARK KOBZ, R. REDD, G. H. MARSH,
C. CARLSON, T. NILLSEN, JAMES McLENNAN,
EVERET SEPPA, FRED TAUCHER,
JOHN ANDERSON, J. W. JAKOBSEN,
E. C. HANSEN, J. B. NORMAN,
K. K. POLLARD, and O. LUND,
Libelants,

vs.

UNITED STATES OF AMERICA,
Respondent.

Praecipe for Transcript on Appeal.

To the Clerk of the Southern Division of the United States District Court, in and for the Northern District of California.

You will please prepare a transcript of the record in the above-entitled cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the appeal and assignment of errors heretofore sued out and perfected to said Court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Statement under Admiralty Rule 4.

2. All of the pleadings with the exhibits and interrogatories and answers to interrogatories annexed thereto.
3. All of the testimony and other proofs including stipulations as to the facts, adduced in the cause.
4. The opinion of the Court.
5. The final decree. [1*]
6. The petition for appeal, order allowing appeal, and notice of appeal.
7. The assignment of errors.
8. The supersedeas.
9. The citation on appeal.
10. The clerk's minutes.
11. This praecipe.
12. Clerk's certificate to transcript.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days after the filing of the notice of appeal in said cause.

Dated this 14th day of April, 1921.

FRANK M. SILVA,
United States Attorney.

FREDERICK MILVERTON,
Special Assistant United States Attorney in Admiralty,

Proctors for Respondents.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

Service of a copy of the foregoing praecipe for transcript of record in the above-entitled cause is hereby admitted this 14th day of April, 1921.

H. W. HUTTON,
Proctor for Libelants.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [2]

In the Southern Division of the District Court of the
United States for the Northern District of Cali-
fornia, First Division.

No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

Statement of Clerk U. S. District Court.

PARTIES.

Libelants: Otis E. Miles, E. M. La Casa, John Nel-
son, T. M. Thompson, Manuel Fernandez, J.
Rodrigues, A. E. Awort, Mark Kobz, R. Redd,
G. H. Marsh, C. Carlson, T. Nilsen, James Mc-
Lennan, Evert Seppa, Fred Taucher, John
Anderson, J. W. Jakobssen, E. C. Hansen, J. E.
Norman, K. K. Pollard and O. Lund.

Respondent: The United States of America. [3]

PROCTORS.

For Libelants: H. W. HUTTON, Esq., San Francisco, Calif.

For Respondent: FRANK M. SILVA, Esq., United States Attorney, FREDERICK MILVERTON, Esq., Special Assistant United States Attorney in Admiralty, San Francisco.

PROCEEDINGS.

1920.

May 11. Filed libel for salvage with interrogatories attached.

August 27. Filed answer of respondent, with answers to interrogatories; also, interrogatories propounded to libelants.

September 10. Filed libelant's answers to respondent's interrogatories.

November 5. Hearing was this day had, before the Honorable, MAURICE T. DOOLING, Judge, and was ordered submitted.

1921.

February 18. Filed opinion in which it was ordered that each libelant recover a sum equal to two months' pay.

March 1. Filed final decree.

April 15. Filed notice of appeal.
 Filed petition for appeal.
 Filed assignment of errors.
 Filed supersedeas.
 Filed citation on appeal.

18. Filed stipulation and order that original exhibits be transmitted to U. S. Circuit Court of Appeals. [4]
-

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON, T. M. THOMPSON, MANUEL FERNANDEZ, J. RODRIGUES, A. F. AWORT, MARK KOBZ, R. REDD, G. H. MARSH, C. CARLSON, T. NILSEN, JAMES McLENNAN, EVERT SEPPA, FRED TAUCHER, JOHN ANDERSON, J. W. JAKOBSEN, E. C. HANSEN, J. E. NORMAN, and K. K. POLLARD, and O. LUND,
Libelants,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

(Libel for Salvage and Interrogatories.)

To the Honorable M. T. DOOLING, Judge of said Court:

The libel of the libelants, above-named seamen, against the United States of America, stockholder and a nation, in a cause of salvage, civil and maritime, alleges as follows:

I.

That on all of the dates and times herein mentioned, United States Shipping Board and Emergency Fleet Corporation were and now are corporations organized and existing under and by virtue of the laws of the Congress of the United States of America, and on all of said dates and times, The United States of [5] America, defendant herein, owned all of the outstanding capital stock of each of said corporations each thereof being a capital stock corporation.

II.

That on all of said dates and times, one of the said corporations mentioned in paragraph I hereof but which one libelants do not know was the owner of those two certain steam vessels, each of which was employed as a merchant vessel of the United States, one being named, known and called the "West Inskip," and the other being named, known and called the "Deuel."

III.

That heretofore and during the month of November, 1919, libelants each shipped as seamen on said vessel "West Inskip," on a voyage from San Francisco to Asiatic ports and return, and each thereof regularly signed shipping articles for such voyage, before the United States Shipping Commissioner for the Port of San Francisco, and each thereof went on board and into the service of said vessel in accordance with such shipping articles, during said month of November, 1919, in the following

capacities, and at the following rates of wages, to wit:

Otis E. Weber, E. M. La Casa and John Nelson as oilers, at the wages of \$90.00 per month; T. M. Thompson, Manuel Fernandez, J. Rodrigues, Mark Kobz, R. Redd, and G. H. Marsh, as firemen, at the wages of \$90.00 per month; A. F. Awort, as deck engineer, at the wages of \$105.00 per month; C. Carlson, T. Nilson, James McLennan, Evert Seppa, Fred Taucher, John Andersen, J. M. Jakobssen, E. C. Hansen and O. Lund as sailors, at the wages of \$90.00 per month; J. E. Norman, as carpenter, at the wages of \$105.00 per month, and K. K. Pollard as an ordinary seaman, at the wages of \$65.00 per month. [6]

IV.

That said vessel "West Inskip" with libelants so on board left the said port of San Francisco and thereafter arrived at Yokohama, Japan, and having transacted such business there as was necessary left the said port for the further prosecution of her said voyage, on the 14th day of December, 1919; that about three hours after said vessel left said Yokohama the said vessel "Deuel" was sighted from the said "West Inskip," the said "Deuel" then being aground on a reef, with a hole in her bottom and in a dangerous and perilous condition, with a large and valuable cargo on board, all of which was in great danger of total loss; that the master of said "West Inskip" proceeded with said vessel to the assistance of the said "Deuel" and her cargo, and after continuous efforts of the said "West Inskip"

and her crew, to wit, the libelants and also the officers of said "West Inskip," the said "Deuel" was pulled off of the said reef and said vessel and what remained of her cargo was saved from total loss; that during said salvaging of said vessel and cargo, libelants who could be spared from said "West Inskip" went on board said "Deuel" and assisted in throwing overboard a large portion of a deckload of cargo carried by said "Deuel" and moving a portion of what remained to the after-end of said vessel so as to lighten the forward part of said vessel that had come in contact with said reef, and lines were stretched from said "West Inskip" to said "Deuel" on which said "West Inskip" exerted a strain and other necessary efforts were made, all of which resulted in the saving of said "Deuel" and the remaining portion of her cargo as aforesaid from total loss.

V.

That libelants do not know who the owner of said cargo either saved or thrown overboard was, nor do they know the value [7] of either the salvaged or destroyed parts thereof, but allege that salvage will be paid to defendant as owner of said "West Inskip" by the owner or owners of the saved portion of said cargo if the same has not already been paid.

VI.

That libelants not at this time knowing the value of said salvaged property are unable to definitely state what would be a reasonable award to be made to each for his services aforesaid, but from such information as they have allege that not less than

one thousand (\$1,000.00) dollars to each of the libelants would be reasonable award to be made for such services, and larger if the value of such salvaged property when such values are ascertained herein warrants it.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

WHEREFORE libelants pray that defendant *may required* to answer under oath the premises aforesaid, and the interrogatories attached hereto, and that this Honorable Court will be pleased to make a reasonable salvage award to each of the libelants for his services aforesaid, with costs, and that libelants may have such other and further relief as the Court is competent to give in the premises.

All of the Libelants in the Caption Hereof
Named.

By H. W. HUTTON,
Their Proctor,

H. W. HUTTON,

Proctor for Libelants. [8]

United States of America,
Northern District of California,—ss.

H. W. Hutton, being first duly sworn, deposes and says as follows:

I am proctor for the libelants in the caption hereof named, each of said libelants is absent from the city and county of San Francisco, on voyages to sea, or are more than one hundred miles away from said San Francisco, where I have my office and

reside, and I therefore for that reason, make this verification on their and each of their behalf; the matters contained in the foregoing libel were drawn up by me from information given to me by the libelants, and the same are true according to the best of my knowledge, information and belief.

H. W. HUTTON.

Subscribed and sworn to before me this 11th day of May, 1920.

[Seal]

T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California. [9]

Interrogatories (Propounded to Respondent).

1. Who was the owner of the "Deuel" between the 13th and 17th days of December, 1919?

2. Who owned her cargo?

3. What was the value of the "Deuel" when she struck the reef on the coast of Japan, December 14th, 1919,—that is to say, immediately before she so struck?

3. What did it cost to repair her?

4. What was her value after such repair?

5. What was the value of the cargo thrown overboard in salving the "Deuel"?

6. What was the value of the salvaged portion of her cargo?

7. Has any effort been made to collect salvage from the salvaged portion of the cargo of said "Deuel"? If so, what effort?

8. Has any salvage been paid by said salvaged cargo? If so, how much?

9. If any salvage money has been paid for salvaging said salvaged portion of the cargo of the "Deuel," to whom was it paid?

10. Has any adjustment been made of the amount that the "Deuel" should pay to the owners of the "West Inskip" for the salvage services rendered by the "West Inskip" to the "Deuel" on the 14th, 15th and 16th days of December, 1919, on the coast of Japan? If so, what is the amount?

11. What, if any, proceedings have been taken to adjust the amount that the owners of the cargo of the "Deuel" and the owners of the said "Deuel" should pay to the owners of the "West Inskip," and her officers and crew for the salvage services rendered to said "Deuel" and her cargo by the said [10] "West Inskip" and her officers and crew on the 14th, 15th and 16th days of December, 1919.

H. W. HUTTON,
Proctor for Libelants.

[Endorsed]: Filed May 11, 1920. W. B. Maling, clerk. By T. L. Baldwin, Deputy Clerk. [11]

Exhibit "A."

(RETURN REGISTRY RECEIPT FROM THE
ATTORNEY GENERAL ATTACHED
HERETO.)

In the Southern Division of the United States Dis-
trict Court in and for the Northern District of
California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

**(Affidavit of Service of Copy of Libel and of Mail-
ing the Same by Registered Letter to the Attor-
ney General of the United States, at Washing-
ton, D. C.)**

H. W. Hutton, being first duly sworn, deposes and
says as follows:

On the 11th day of May, 1920, immediately after
the filing of the libel in the above cause with the
clerk of said court, I served a copy of the said libel
on the United States Attorney for the Northern
District of California, by delivering and leaving a
copy thereof at her office, and immediately there-
after enclosed a copy of said libel in an envelope
addressed to the Attorney General of the United
States, Washington, District of Columbia, and hav-
ing prepaid the postage and registering fees thereon

I delivered the same to the Registry Clerk at the United States postoffice in the city and county of San Francisco, State of California, and requesting a return receipt for such package, I in due course received the same through the United States mails, the said receipt being attached hereto [12] and marked Exhibit "A."

H. W. HUTTON.

Subscribed and sworn to before me this 25th day of May, 1920.

[Seal]

C. W. CALBREATH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed May 25, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [13]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Answer.

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court for the Northern District of California.

Comes now the United States of America, defendant above named, represented herein by Frank M. Silva, United States Attorney in and for the Northern District of California, by and through E. M. Leonard, Assistant United States Attorney, and for answer to the libel on file herein, denies, admits and alleges as follows:

I.

Answering unto the allegations of Article 4 of said libel, denies that when the said vessel "Deuel" was sighted by said vessel "West Inskip," that said "Deuel" was in a dangerous and perilous condition with a large and valuable cargo on board, and all or any part of which was in great or any danger of total loss and in this behalf alleges that at no time was the said "Deuel" in danger of total or any great loss, that she was a short distance offshore, that the agent of the insurer of said vessel was board her [14] after she ran aground, and before any material assistance was rendered by said "West Inskip," with the stevedores, barges and tugs, and that the entire salving of said vessel was in the hands and under the control, and accomplished under the supervision of said agent of said insurer, and that said vessel was rescued mainly with the assistance of said barges, stevedores brought aboard and furnished by said agent.

II.

Answering unto the allegations of Article 5 of said libel, alleges that no salvage has been paid for salvaging the said cargo of "Deuel," but a tentative agreement has been made to settle the claim of the "West Inskip" and of her crew in the sum of \$45,000.00, of which \$40,000.00 is to be applied for services of the "West Inskip" and \$5,000.00 for her crew.

III.

Answering unto the allegations of Article 6 of said libel, denies that the sum of \$1,000.00 to each of said libelants would be a reasonable award to be made for such services as may have been rendered by them, and denies that they are entitled to any reward other or additional to that already offered to them as hereinafter set forth.

IV.

Answering unto allegations of Article 7 of said libel, denies that all and or singular premises of said libel are true, but admits that the same are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court; alleges that an offer of settlement has been made to said libelants on the basis of \$5,000.00 to be apportioned among the members of said crew as follows:

First. \$600.00 to the master of said vessel and [15] \$50.00 extra to members of the crew who boarded said vessel "Deuel" and assisted in jettison work and balance of said \$5,000.00 to be apportioned according to salaries earned by members of said crew.

WHEREFORE defendant prays that libelants be awarded nothing more than sums offered as above

alleged; that defendant recover its costs and charges herein occurred and such other and further relief as may be just.

Dated this 26th day of August, 1920.

FRANK M. SILVA,
United States Attorney,
E. M. LEONARD,
Asst. United States Attorney,
Proctors for Defendant. [16]

Interrogatories Propounded to Libelants.

I.

What are the names of the libelants who went aboard the steam vessel "Deuel" about December 14th and 15th, 1919?

II.

For what period of time was each of said libelants aboard said steam vessel "Deuel" and on what date?

III.

Did any of libelants receive overtime pay for services rendered while salvage of the "Deuel" was being made? If so, for what period of time and in what amount?

FRANK M. SILVA,
United States Attorney,
E. M. LEONARD,
Asst. United States Attorney,
Proctors for Libelee. [17]

Answers to Interrogatories (Propounded to Respondent).

1. United States of America was the owner of the "Deuel" between the 13th and 17th days of December, 1919.

2. The cargo of the "Deuel" was owned by about 32 different consignees as follows:

Order Japan Cotton Trading Co. of Texas notify Nippon Menkwa Kabushiki Kaisha, Kobe.

Order Southern Products Co., notify Mitsui Bussan Kaisha, Ltd., Kobe.

J. Witkowski & Co., notify M. Takase, Fusan, Korea.

J. Witkowski & Co., notify G. Konishi, Kobe.

J. Witkowski & Co., notify Seishin Shoko, Dairen, Manchuria.

J. Witkowski & Co., notify Kawano Honten, Chemulpo, Korea.

Order Rogers, Brown & Co., notify Cho Ito & Co., Kobe.

Order Northwest Trading Co., Ltd., notify Iwasaki Mercantile Co., Kobe.

Northwest Trading Co., Ltd., notify Northwest Trading Co., Ltd., Kobe.

Order United States Steel Products Co., A/C Takata & Co., notify Takata & Co., Kobe.

Order Taiyo Shoko Kaisha, Ltd., notify Taiyo Shoko Kaisha, Ltd., Kobe.

Order Mutual Products Trading Co., notify Sogo Boeki Shokai, Osaka, Japan.

Order T. Takiguchi Co., notify C. T. Takahashi, Osaka.

- Order Rogers Brown & Co., notify Konoshita Trading Co., Ltd., Kobe.
- Order Mitsui & Co., Ltd., notify Mitsui Bussan Kaisha, Fusan, Korea.
- Order Japan Cotton Trading Co., notify Nippon Menkwa Kabushiki Kaisha, Kobe.
- Order United States Steel Products Co., A/C Mitsui Bussan Kaisha, Ltd., notify Mitsui Bussan Kaisha, Ltd., Kobe.
- Order United States Steel Products Co., A/C Iwai & Co., Ltd., notify Iwai & Co., Ltd., Osaka. [18]
- Order C. Itch & Co., Ltd., notify C. Itoh & Co., Ltd., Kobe.
- Order Mitsui & Co., Ltd., notify Mitsui Bussan Kaisha Ltd., Nagasaki.
- Order International Lumber Export Co., Inc., notify S. Awaya & Co., Osaka.
- Order International Lumber Export Co., Inc., notify Hayama Shoten, Kobe.
- Order Mitsui & Co., Ltd., notify Mitsui Bussan Kaisha Ltd., Dairen, Manchuria.
- Order Southern Products Co., notify Mitsui Bussan Kaisha, Ltd., Yokohama.
- Order Japan Cotton Trading Co., of Texas notify Nippon Menkwa Kabushiki Kaisha, Yokohama.
- Order United States Steel Products Co., A/C Takata & Co., notify Takata & Co., Tokio.
- Order Mitsui & Co., Ltd., notify Mitsui Bussan Kaisha, Ltd., Yokohama.
- Order United States Steel Products Co., A/C Mistui Bussan Kaisha, Ltd., notify Mitsui Bussan Kaisha, Ltd., Yokohama.

Order Mutal Products Trading Co., notify S. Kato & Co., Yokohama.

Order S. Kawano, notify N. Uchida & Co., Tokio.

Order Takeichi Co., notify S. Ban Co., Tokio.

Order Mitsui & Co., Ltd., notify Mitsui Bussan Kaisha, Ltd., Kobe.

3. It costs about \$60,000.00 to repair the said "Deuel."

4. Her value was about \$1,250,000.00 in sound condition.

5. According to available records all jettisoned cargo of "Deuel" was recovered undamaged.

6. The value of salvaged cargo was about \$1,500,000.00.

7. General average bonds were signed by the consignees and security for payment of general average and salvage was taken either as cash or deposit from the consignees or a guarantee of underwriters.

8. No salvage has been paid by the salvaged cargo.

9. Same as answer to eight.

10. Attempt to adjust the amount that the "Deuel" should pay [19] the owners of "West Inskip" has been made by the insurance division of the Emergency Fleet Corporation by tentative agreement to settle claim of "West Inskip" and her crew in the sum of \$45,000.00 of which \$40,000.00 is to be applied to the services of the ship "West Inskip" and \$5,000.00 to be apportioned to her crew. The leading cargo underwriters have agreed to this amount.

11. Same as ten.

FRANK M. SILVA,
United States Attorney,
E. M. LEONARD,
Asst. United States Attorney,
Proctors for Defendant.

[Endorsed]: Filed Aug. 27, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[20]

In the Southern Division of the District Court of
the United States in and for the Northern Dis-
trict of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

UNITED STATES OF AMERICA,

Defendant.

Answers to Interrogatories Attached to Answer.

United States of America,
Northern District of California,—ss.

In answer to the interrogatories attached to defendant's answer, the proctor for the libelants states that he makes the answer on behalf of the libelants for the reason that on account of the long time it took defendant to answer in this case, libelants became scattered throughout the world, and it is impossible for him to now reach them.

In answer to the first interrogatory he states:

That the names of the libelants who went on board of the "Deuel," and assisted in moving her cargo are: J. W. Jacomssen, C. Carlson, John Anderson, T. Nilson, K. K. Pollard, E. C. Hansen and Evert Seppa.

In answer to the second interrogatory, he states:

That they went on board of the "Deuel," at 1 P. M. December 15th, 1919, and stayed on board until the hour of 9:15 of said day.

In answer to Interrogatory Number III, he states, that he is [21] unable to answer said interrogatory, but states that the matter inquired of in said interrogatory must be within the knowledge of defendant as it must know whether it paid overtime for the work inquired of or whether it did not.

H. W. HUTTON.

Sworn to before me this 10th day of September, 1920.

[Seal]

T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Copy received this 10th day of September, 1920.

FRANK M. SILVA,
Attorney for Defendant.

Filed Sep. 10, 1920. W. B. Maling, Clerk. By
T. L. Baldwin, Deputy Clerk. [22]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Friday, the fifth day of November, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable M. T. DOOLING, Judge.

No. 16,853.

OTIS E. MILES et al.

vs.

UNITED STATES OF AMERICA.

Minutes of Court—November 5, 1920—Hearing.

This cause came on regularly this day for hearing of the issues joined herein. H. W. Hutton, Esq., was present as proctor for libelant. E. M. Leonard, Esq., Asst. U. S. Atty., was present as proctor on behalf of respondent. Mr. Hutton introduced in evidence copy of log, which was filed and marked Libelants' Exhibit No. 1. After hearing the respective proctors herein, the Court ordered that said matter be submitted on briefs to be filed in 10, 10 and 5 days. [23]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

Before Hon. M. T. DOOLING, Judge.

OTIS E. MILES et al.,

Libelants,

vs.

UNITED STATES OF AMERICA,

Respondent.

Transcript of Proceedings at Hearing.

Friday, November 5, 1920.

COUNSEL APPEARING:

For the Libelants: H. W. HUTTON, Esq.

For the United States: E. M. LEONARD, Esq.,
Assistant U. S. Attorney.

Mr. HUTTON.—This is also a salvage case, if your Honor please, and we have practically agreed on all of the facts in the case. The facts of the case, if your Honor please, are these: The “Deuel,” a new steamer, with a cargo of the value, which is agreed to, of \$1,500,000, went on shore just out of Yokohama. Now, there were some interrogatories attached to the libel, asking for the value of the cargo, which is said to be \$1,500,000, which we are satisfied with; also, as to the value of the vessel, the answer to the interrogatory is \$1,250,000; that was a typographical error, I believe, Mr. Leonard. I believe it is agreed that the value of the vessel was \$1,762,000.

The COURT.—\$1,762,000? [24]

Mr. HUTTON.—Yes.

Mr. LEONARD.—\$1,760,000; the insurance on the vessel, I understand, is \$1,760,000, on each of the vessels, are “West Inskip” and the “Deuel.”

Mr. HUTTON.—\$1,760,000, which makes a value of \$3,260,000. She went on shore on a dangerous reef, and it is conceded practically in the report of the master, the copy of the log-book that I will offer in evidence, that both vessels were in danger, and there is no question about it; that considerable skill was used by the master of the “West Inskip” in towing the “Deuel” off the rocks, the winds were bad and likely to be bad, and she was close in, and the sea kept up, and there was considerable danger. You have no objection to this, have you, Mr. Leonard?

Mr. LEONARD.—No, none, whatever.

Mr. HUTTON.—I will offer in evidence a copy of the log of the “West Inskip.” It practically shows all the conditions. Now, I call your Honor’s attention to this part of it: “In conclusion, it may be said the bottom where the ‘Deuel’ stranded is rocky and uneven, and is much broken up all around. The nearest land above water was fully one and one-quarter miles off. The position was fraught with danger, in so much that a westerly wind (the prevailing winds at this season) would have materially lessened the ‘Deuel’s’ chances. Moderate and fine weather prevailed. A steam salvage schooner arrived on the 15th and was most anxious to render assistance, which, however, was not accepted. The refloating of the ‘Deuel’ in such quick time is mainly

due to the masterly way in which Captain Tibbetts, of the 'West Inskip' placed his ship in position, and then rendered very efficient service." [25]

It is agreed, if your Honor please, between us that the wages of the officers and crew of the "West Inskip" were \$5,370, of which the master's wages were \$357.50, and the supercargo's wages were \$175 a month.

Seven men of the "West Inskip" went from her over on to the "Deuel" and assisted in throwing overboard considerable of her cargo, which was subsequently saved, it being lumber, and the Shipping Board, and Mr. Leonard, and myself have all thought that these men are entitled to additional compensation to what your Honor should think the others would be entitled to, and we have practically always understood and agreed that \$50 additional to those men could be a reasonable allowance.

Mr. LEONARD.—I will state to the Court there were negotiations, and that would have been the basis of the compromise that was offered by the Shipping Board, although I don't know how far that will be conclusive upon the Court; I think the Court will act on its own judgment as to what award should be made.

Mr. HUTTON.—There have been no depositions taken in the case, because the facts are very clearly set forth; the values are all agreed upon, and there is no dispute, practically, in the pleadings about the services, and I suppose it would be better to submit the case on briefs.

Mr. LEONARD.—Yes.

[Endorsed]: Filed May 11, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [26]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

UNITED STATES OF AMERICA,

Respondent.

(Opinion and Order to Enter a Decree Awarding to Each Libelant an Amount Equal to Two Months' Pay.)

H. W. HUTTON, Esq., Proctor for Libelants.

FRANK M. SILVA, Esq., United States Attorney,
and E. M. LEONARD, Esq., Assistant United States Attorney, Attorneys for Respondents.

It is admitted that libelants are entitled to some award for salvage, the only question being as to the amount. Considering all the circumstances, I think an award equal to two months' pay to each libelant will be fair. A decree will be entered accordingly.

February 18th, 1921.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Feb. 18, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [27]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

UNITED STATES OF AMERICA,

Defendant.

(Decree.)

This cause having been heard upon the pleadings and proofs and the arguments and briefs of the respective parties, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises, now, therefore, by reason of the matters set forth in the pleadings and shown by the proofs herein, it is ORDERED, ADJUDGED AND DECREED, that libelants have and recover from the defendant The United States of America, and defendant The United States of America pay to the libelants or to H. W. Hutton, their proctor for them, for salvage services rendered by libelants to the steam vessel "Deuel" and her cargo, the following amounts respectively, the same being in amount two months' wages to each libelant, to wit:

To Otis E. Miles, the sum of one hundred and eighty (\$180.00) dollars.

To E. M. La Casa, the sum of one hundred and eighty (\$180.00) dollars.

- To John Nelson, the sum of one hundred and eighty (\$180.00) dollars. [28]
- To T. M. Thompson, the sum of one hundred and eighty (\$180.00) dollars.
- To Manuel Fernandez, the sum of one hundred and eighty (\$180.00) dollars.
- To A. Rodrigues, the sum of one hundred and eighty (\$180.00) dollars.
- To Mark Kobs, the sum of one hundred and eighty (\$180.00) dollars.
- To R. Rodd, the sum of one hundred and eighty (\$180.00) dollars.
- To G. H. Marsh, the sum of one hundred and eighty (\$180.00) dollars.
- To A. F. Awort, the sum of two hundred and ten (\$210.00) dollars.
- To C. Carlson, the sum of one hundred and eighty (\$180.00) dollars.
- To T. Nilson, the sum of one hundred and eighty (\$180.00) dollars.
- To James McLennon, the sum of one hundred and eighty (\$180.00) dollars.
- To Evert Seppa, the sum of one hundred and eighty (\$180.00) dollars.
- To Fred. Taucher, the sum of one hundred and eighty (\$180.00) dollars.
- To John Anderson, the sum of one hundred and eighty (\$180.00) dollars.
- To J. M. Jakobssen, the sum of one hundred and eighty (\$180.00) dollars.
- To E. C. Hansen, the sum of one hundred and eighty (\$180.00) dollars.

To O. Lund, the sum of one hundred and eighty (\$180.00) dollars. [29]

To J. E. Norman, the sum of two hundred and ten (\$210.00) dollars; and

To E. K. Pollard, the sum of one hundred and thirty (\$130.00) dollars,

—all libelants herein as aforesaid, and all with their costs to be taxed, and interest from the date of this decree.

It is further ORDERED, ADJUDGED AND DECREED, that upon making payment of the above amounts to said H. W. Hutton, proctor for said libelants, this judgment and decree be adjudged to have been satisfied and paid to the libelants above mentioned.

Dated March 1st, 1921.

M. T. DOOLING,
District Judge.

[Endorsed]: Copy received this 21st day of February, 1921.

FRANK M. SILVA,
Proctor for Defendant.

Entered in Vol. 10, Judg. and Decrees, at page 321.

Filed Mar. 1, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [30]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON, T. M. THOMPSON, MANUEL FERNANDEZ, J. RODRIGUES, A. F. AWORT, MARK KOBZ, R. REDD, G. H. MARSH, C. CARLSON, T. NILSEN, JAMES McLENNAN, EVERT SEPPA, FRED TAUCHER, JOHN ANDERSON, J. W. JAKOBSEN, E. C. HANSEN, J. B. NORMAN, K. K. POLLARD, and O. LUND,
Libelants,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Notice of Appeal.

To the Libelants Above Named and to H. W. Hutton, Esq., Their Proctor:

You and each of you are hereby notified that the United States of America, respondent above named, intends to and hereby does appeal from the decision and final decree made and entered in the above-entitled court and cause on the 1st day of March, 1921, to the United States Circuit Court of Appeals for the Ninth Circuit, and, in accordance with the practice and procedure in admiralty, intends to and will make application for leave of the Honorable United States Circuit Court of Appeals for the

Ninth Judicial Circuit to take new proofs before said court in support of the allegations and facts set forth and contained in the several paragraphs of the said respondent's answer filed in said suit.

Dated at San Francisco, California, this 14th day of April, 1921.

FRANK M. SILVA,

United States Attorney,

FREDERICK MILVERTON,

Special Assistant United States Attorney in Admiralty,

Proctors for Respondent.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [31]

—

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. CASA, JOHN NELSON, T. M. THOMPSON, MANUEL FERNANDEZ, J. RODRIGUES, A. F. AWORT, MARK KOBZ, R. REDD, G. H. MARSH, C. CARLSON, T. NILSEN, JAMES McLENNAN, EVERT SEPPA, FRED TAUCHER, JOHN ANDERSON, J. W. JAKOBSEN, E. C. HANSEN, J. B. NORMAN, K. K. POLLARD, and O. LUND,
Libelants,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Petition for Appeal.

The above-named respondent, the United States of America, conceiving itself aggrieved by the final decree made and entered in the above-entitled cause on the 1st day of March, 1921, wherein and whereby it was ORDERED, ADJUDGED AND DECREED that the libelants above named have and recover against the said United States of America two months' pay to each of said libelants for salvage services rendered by them to the SS. "Deuel," together with costs and interest from the date of said judgment, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decree, for the reasons set forth in the assignment of errors filed herewith, and said respondent prays that its petition herein for its said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. [32]

Dated at San Francisco, California, this 14th day of April, 1921.

FRANK M. SILVA,
United States Attorney.

FREDERICK MILVERTON,
Special Assistant United States Attorney in Ad-
miralty,
Proctors for Respondent United States of America,

Order Allowing Appeal.

Upon the foregoing petition of the United States

of America, respondent above named, praying for the allowance of an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, it appearing to the Court that said respondent has duly filed its assignment of errors as required by law and the rules of said United States Circuit Court of Appeals for the Ninth Circuit; now, therefore,

IT IS HEREBY ORDERED that the said appeal be, and the same is hereby, allowed as prayed for.

Dated at San Francisco, California, this 14th day of April, 1921.

W. H. HUNT,
Judge of said United States Circuit Court.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [33]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON, T. M. THOMPSON, MANUEL FERNANDEZ, J. RODRIGUES, A. F. AWORT, MARK KOBZ, R. REDD, G. H. MARSH, C. CARLSON, T. NILSEN, JAMES McLENNAN, EVERT SEPPA, FRED TAUCHER, JOHN ANDERSON, J. W.

JAKOBSSSEN, E. C. HANSEN, J. B. NORMAN, K. K. POLLARD, and O. LUND,
Libelants,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Assignment of Errors.

NOW COMES the United States of America, respondent above named, and says:

That in the record and proceedings in the above-entitled cause there is manifest error and said respondent now makes, files and presents the following assignment of errors upon which it will rely upon the appeal of said cause to the Circuit Court of Appeals for the Ninth Judicial Circuit, as follows, to wit:

1. The Court erred in awarding to the said libelants or to any of them any amount whatsoever for alleged salvage services rendered to the SS. "Deuel."

2. The Court erred in awarding to the said libelants and to each of them two months' pay for salvage services alleged to have been rendered by them to the said SS. "Deuel," and in awarding to said libelants and to each of them any amount in excess of one month's pay to each of them as compensation for said alleged salvage services.

3. The Court erred in failing to render a decision and [34] order judgment entered in favor of the said respondent, the United States of America, dismissing the libel of said libelants filed in said cause.

4. The Court erred in awarding to the said libelants and to each of them any amount whatsoever, for the reason that said libelants were at the time of the alleged salvage services members of the crew of a vessel belonging to the United States of America, and rendered salvage services, if any, to a vessel likewise belonging to the said United States of America, and by reason thereof it became the duty of the said libelants and each of them to render said services without compensation beyond their wages as seamen on said United States vessel.

Dated at San Francisco, California, this 14th day of April, 1921.

FRANK M. SILVA,
United States Attorney.

FREDERICK MILVERTON,
Special Assistant United States Attorney in Ad-
miralty,

Proctors for Respondent.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [35]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON, T. M. THOMPSON, MANUEL FERNANDEZ, J. RODRIGUES, A. F. AWORT, MARK KOBZ, R. REDD, G. H. MARSH, C. CARLSON, T. NILSEN, JAMES McLENNAN, EVERT SEPPA, FRED TAUCHER, JOHN ANDERSON, J. W. JAKOBSEN, E. C. HANSEN, J. B. NORMAN, K. K. POLLARD, and O. LUND,
Libelants,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Supersedeas.

The United States of America, respondent above named, having duly given notice of appeal from the decision and final decree in the above-entitled cause entered on the 1st day of March, 1921, and having duly filed its assignment of errors upon said appeal,—

IT IS HEREBY ORDERED that said decision and decree be and the same is hereby superseded and all proceedings thereunder stayed.

April 14, 1921.

W. H. HUNT,
Judge of the United States Circuit Court.

[Endorsed]: Filed Apr. 15, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [36]

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES et al.,

Libelants,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

**Stipulation (and Order to Transmit Original
Exhibit).**

It is hereby stipulated by and between the parties
above named that upon the appeal of the above-
named respondent in the above-entitled cause, there
may be transmitted to the clerk of the Circuit Court
of Appeals for the Ninth Circuit all the exhibits filed
in said cause in their original form.

Dated, this 15th day of Aril, 1921.

H. W. HUTTON,

Proctor for Libelants,

FRANK M. SILVA,

United States Attorney,

FREDERICK MILVERTON,

Special Assistant United States Attorney, in Ad-
miralty.

It is so ordered.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Filed Apr. 18, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [37]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 37 pages, numbered from 1 to 37, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Otis E. Miles et al., Libelants, vs. United States of America, Respondent, No. 16,853, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal (copy of which is embodied herein), and the instructions of the proctor for respondent and appellant herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Twelve Dollars and Fifty-five Cents (\$12.55), and that the same will be charged against the United States, in my next quarterly account.

Annexed hereto is the original citation on appeal, issued herein (page 39).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

this 13th day of May, A. D. 1921.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [38]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,853.

OTIS E. MILES, E. M. LA CASA, JOHN NELSON, T. M. THOMPSON, MANUEL FERNANDEZ, J. RODRIGUES, A. F. AWORT, MARK KOBZ, R. REDD, G. H. MARSH, C. CARLSON, T. NILSEN, JAMES McLENNAN, EVERT SEPPA, FRED TAUCHER, JOHN ANDERSON, J. W. JAKOBSEN, E. C. HANSEN, J. B. NORMAN, K. K. POLLARD, and O. LUND,
Libelants,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Citation.

United States of America,
Northern District of California,—ss.

The President of the United States of America, to
the Libelants Above Named, GREETING:

You and each of you are cited and admonished

to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Southern Division of the District Court of the United States in and for the Northern District of California, in the above-entitled proceeding, wherein the above-named United States of America is respondent and you are the respective libelants, to show cause, if any there be, why the decree entered in the above-entitled proceeding on the 1st day of March, 1921, in said appeal mentioned, and thereby appealed from, should not be corrected and reversed, and speedy justice should not be done to the parties in that [39] behalf.

WITNESS the Honorable W. H. HUNT, Judge of the District Court in and for the Southern Division of the District Court of the United States in and for the Northern District of California, at the city of San Francisco, State of California, this 14th day of April, 1921.

W. H. HUNT,

United States Circuit Judge.

Service of a copy of the within citation, and of notice of appeal, petition on appeal, order allowing appeal, assignment of errors, and order of supersedeas, in the above-entitled cause, are hereby admitted this 14th day of April, 1921.

H. W. HUTTON,

Proctor for Libelants. [40]

[Endorsed]: No. 16,853. In the Southern Division of the District Court of the United States for the Northern District of California, First Division. In Admiralty. Otis E. Miles et al., Libelants, vs. The United States of America, Respondent. Citation. Filed Apr. 15, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [41]

[Endorsed]: No. 3686. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Otis E. Miles, E. M. La Casa, John Nelson, T. M. Thompson, Manuel Fernandez, J. Rodrigues, A. F. Awort, Mark Kobz, R. Redd, G. H. Marsh, C. Carlson, T. Nilsen, James McLennan, Evert Seppa, Fred Taucher, John Anderson, J. W. Jakobssen, E. C. Hansen, J. B. Norman, K. K. Pollard, and O. Lund, Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed May 13, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Libelants' Exhibit No. 1.

Copy.

**RECORD OF AMERICAN AND FOREIGN
SHIPPING "AMERICAN LLOYDS."
AMERICAN BUREAU OF SHIPPING.**

66 Beaver St., New York.

Yokohama, 19th December, 1919.

This is to certify that a refloating survey was held on S. S. "DEUEL" of 3645 tons off the port of Misaki, Lat: 35-10 North. Long: 139-35 East.

THE UNDERSIGNED proceeded by motor car to Misaki, took boat, arrived on board the S. S. "DEUEL" at 8 A. M. 15th instant and found: The S. S. "DEUEL" from Seattle, laden with general cargo under hatches and deckload of square logs lumber on deck fore and aft, destined to Yokohama. When making the entrance to Tokio Gulf she STRANDED, 14th inst. at 9:05 A. M. the time of high water with falling neap tides. The S. S. "WAWALONA" anchored in safe position and standing by to render assistance. The S. S. WEST INSKIP" in a very favorable position to render assistance—i. e. both anchors down and three tow lines (1-5" steel wire, 2-8" man: Hawsers) attached to the S. S. "DEUEL" and stern to stern. On the 15th inst., from 8:30 to 10:50 A. M. an united effort was made to refloat but there was no movement of the "DEUEL." It was reported the Fore Peak leaking and the fuel oil (said to be 800 bbls) kept therein had leaked and that the remaining fuel oil in this compartment was damaged by sea water contact.

Soundings in all other parts of the ship showed no change. Rise and fall of tide 4 feet. Soundings taken all round the ship at noon 15th inst. gave:

During the day the most favorable disposition was made of all movable oil fuel and water ballast. The ship's crew assisted by the crew of the "WEST INSKIP" handled the deck cargo of square logs, shifting some to the after main deck and throwing other overboard and this was continued through raining weather until about 10:30 P. M.

A wireless was sent to Yokohama for cargo lighters to carry 300 tons and for 40 stevedore men. A steamtug (previously ordered) arrived but was too small to be effected—the steamtug was sent back to hurry up the lighters and men. This P. M. (15gh inst) the "Wawalona" left: the service of standing by only had been rendered, no rope was passed from ship to ship. The P. M. tide (15th inst:) serving badly no effort was made to refloat. Arrangements were made by the Company's Agent with the local Officials for the fishermen to salve the jettisoned logs lumber.

Copy.

AREOGRAMS.

CAPT. TIBBETSS—ALL LINES NOW SECURED WILL YOU PLEASE GIVE TWO BLASTS OF YOUR WHISTLE WHEN YOU WANT TO GO FULL SPEED ASTERN WITH OUR ENGINES IN CASE OF NO HEADWAY AND YOU THINK IT BEST TO GIVE IT A TRY IN THE MORNING PLEASE GIVE ME ONE

BLAST ON YOUR WHISTLE, TONIGHT HIGH TIDE AT 9:56 P. M. WILL HAVE CREW STAND BY AT 9:30 P. M. WAWALONA GOING TO STAND BY TILL MORNING IN CASE IT IS NECESSARY TO HAVE ANOTHER TRIAL.

(Signed) W. N. REED, Commander.

Received 6 P. M. December 14, 1919.

WE HAVE NO MORE WIRE LEFT, ONLY ABOUT 10 FATHOMS LEFT TO MAKE FAST HERE AND THAT IT WOULD BE BETTER IF YOU COULD BACK UP A LITTLE WAYS.

(Signed) REED, Commander.

Received 9:15 A. M. December 15, 1919.

TO CAPT. TIBBETTS—WEST INSKIP. YOUR MESSAGES RECEIVED, IF POSSIBLE PLEASE START PULLING AT TEN O'CLOCK OR A LITTLE LATER, UNTIL 12:30, P. M. IF IMPOSSIBLE, THEN WILL HAVE TO MAKE ARRANGEMENTS WITH SALVAGE COMPANY. WILL THROW OFF TIMBERS IN MEAN WHILE. BELIEVE SHE HAS LOOSENED CONSIDERABLY.

(Signed) REED, Commander.

S. V. C. #1—Received 9:15 S. M. December 16, 1919.

TO CAPT. TIBBETTS—STR. WEST INSKIP. CAPTAIN REED WISHES CAPTAIN TIBBETTS A PLEASANT VOYAGE AND IS DEEPLY GRATEFUL FOR SERVICES OF WEST INSKIP, MANY THANKS TO ALL ON BEHALF OF STEAMER DEUEL.

(Signed) REED, Commander.

S. V. C. #2—Received 11:50 A. M. December 16, 1919.

16th Dec. commences with all hands and the 40 stevedore men jettisoning desk cargo. The After Peak (said to contain 200 bbls. fuel oil, had previously been filled with sea water to help tip the ship) was pumped out. At 10:30 A. M. an united effort was made and at 11:20 A. M. the S. S. "DEUEL" re-floated having been towed off by the S. S. "WEST INSKIP" and into deep water, also assisted by the S. S. "DEUEL" going a good full speed astern all the time the effort was being made and up to the time of refloating. Draft when refloated F. 19-6" A. 25'-0". The "WEST INSKIP" proceeded on her voyage. The S. S. "DEUEL" proceeded for Yokohama where she arrived, passed medical examination, and made fast to Buoy in inner harbout at 4:30 P. M. 16th instant.

The number of Logs jettisoned when stranded off Misaki is 143 (one hundred & forty three) 92 destined to Yokohama. 51 destined to Dairen. All cargo under hatches remained untouched, and as the Bilge soundings throughout remained unaltered it is fair to assume there is no damage to cargo under hatches as a result of the stranding.

| Stores or Damage. | Attributed to. |
|--|-----------------------------|
| Fore Peak fuel oil all lost | Due to stranding. |
| After Peak fuel oil all lost | On behalf of all concerned. |
| Two bridge deck ladders leading to main deck | Due to jettison of cargo. |
| 143 Logs Lumber jettisoned | On behalf of all concerned. |
| One coil Man: Rope 2¾") | Use for jettisoned |
| One half coil Man: Rope 2") | lumber to help secure |
| One half coil Man: Ratline 12thd) | a raft. |

In conclusion it may be said the bottom where the "DEUEL" stranded is rocky and uneven and is much broken up all around. The nearest land above water was fully $1\frac{1}{4}$ miles off. The position was fraught with danger insomuch that a Westerly wind (the prevailing winds at this season) would have materially lessened the "DEUEL'S" chances. Moderate and fine weather prevailed. A steam salvage schooner arrived on the 15th inst: and was most anxious to render assistance, which, however, was not accepted. The refloating of the "DEUEL" in such quick time is mainly due to the masterly way in which Captain Tibbetts of the "West Inskip" placed his ship in position and then rendered very efficient service.

The undersigned has transmitted to the "Record" the original of this report which simply deals with the refloating of the S. S. "DEUEL" and the charge is made for attending on board (two full days), advising Master, assisting to refloat, taking steamer to Yokohama, and reporting on refloating of Six hundred yen.

Fee 600 Yen.

(Signed) RENNIE TIPPLE.

RENNIE TIPPLE, A. I. N. A.

Surveyor to American Bureau of Shipping.

Copy.

CONSULATE OF THE UNITED STATES OF
AMERICA.

PORT OF KOBE, JAPAN, to wti:

BY THIS PUBLIC INSTRUMENT OF DECLARATION AND PROTEST. Be it known and

made manifest unto all to whom these presents shall come or may concern, that on the 30th day of December, one thousand nine hundred and nineteen, before me E. H. Dooman, Consul of the United States of America for Kobe, Japan, and the dependencies thereof, personally came and appeared William Reed, Master of the ship or vessel called the *Deuel*, of Seattle, of the burden of 4365 tons, or thereabouts, then lying in this port of Kobe, laden with general cargo, who duly noted and entered with me, the said Consul, his Protest for the uses and purposes hereafter mentioned; and now, on this day, to wit, the day of the hereof, before me the said Consul, again comes the said William Reed, and requires me to extend this Protest; and together with the said William Reed also came Lars Eriksen, mate, Charles Triplett, carpenter, Fred Leyman and Kenneth Paterson, seamen, of and belonging to the said ship, all of whom being by me duly sworn on the Holy Evangelists of Almighty God, did severally voluntarily freely and solemnly declare, depose and state as follows, that is to say: That these appearers, on the 17th day of November, in their capacities aforesaid, sailed in and with the said ship from the port of Seattle, laden with general cargo, and bound to the port of Dairen; that the said ship was then tight, staunch, and strong; had her cargo well and sufficiently manned, victualled, and furnished with all things needful and necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake; that after a stormy and tempestuous passage of twenty-four days, the

compasses were found to be defective; that due to this fact and to the fact that the current at this spot was flowing in a direction opposite to that shown on the charts, the vessel grounded on December 14th, at Kamigo Reef at the entrance of the Gulf of Tokyo at about 9:09 A. M., that a message of distress was immediately despatched to the vessel's agents at Yokohama and endeavors were made, with the assistance of the steamship "West Inskip," to get afloat, but with no success; that Lloyds' Surveyor, who had proceeded to the vessel, then instructed that the cargo on the deck be jettisoned to lighten the vessel, and upon so doing and after the "West Inskip" had been pulling for two hours the vessel slid off ground at 11:20 A. M. on December 16th; that upon arrival in Yokohama, the vessel was drydocked for temporary repairs to allow the vessel to proceed to Kobe, where she arrived on December 27th, for extensive repairs; and that further, the following articles were lost or spoiled by sea water in the after peak.

| | |
|-------------------------|--------------------------------------|
| 100 lbs Rice | 25 lbs Barley |
| 500 lbs Cane Sugar | 100 lbs Dairy salt |
| 200 lbs Brown Sugar | 50 lbs Coffee |
| 75 lbs Spaghetti | 50 lbs Split peas |
| 100 lbs Soda crackers | 25 lbs Macaroni |
| 75 lbs Assorted cookies | 25 lbs Tea |
| 75 lbs Dried apples | 10 lbs pipe Berths and mattresses |
| 25 lbs Cornstarch | |
| 10 lbs Garlic | |

And these said Appearers, upon their oaths aforesaid, do further declare and says: That during the

said voyage they, together with the others of the said ship's company used their utmost endeavors to preserve the said steamer and cargo from all manner of loss, damage, or injury. Wherefore the said William Reed, Master, hath Protested, as by these presents I, the said Consul, at his special instance and request, do publicly and solemnly Protest, against all and every person and persons whom it doth or may concern, and against the winds, and waves, and billows of the seas, and against all and every accident, matter and thing, had and met with as aforesaid, whereby and by reason whereof, the said steamer or cargo already has, or hereafter shall appear to have suffered or sustained damage or injury. And do declare that all losses, Damages, Costs, Charges, and Expenses that have happened to the said steamer or cargo, or to either are, and ought to be borne by these to whom the same by right may appertain by *wasy* of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of the said steamer, her tackle or apparel, or default or neglect of this appearer, his officers or any of his mariners.

This done and protested in the port of Kobe, this 30th day of December, in the year of our Lord one thousand nine hundred and ninteen.

IN TESTIMONY WHEREOF, These Appearers have hereunto subscribed their names, and I, the said Consul, have granted to the said Master this Public Instrument, under my hand and the seal of this Consulate, to serve and avail him and all others whom

it doth or may concern, as need and occasion may require.

Signed: EUGENE H. DOOMAN,
U. S. Consul.

Signed: WILLIAM REED, Master.
LARS ERIKSON, Mate.
CHARLES TRIPLETT, Carpenter.
FRED LEYMAN, Seaman.
KENNETH PATERSON, Seaman.

Empire of Japan,
Port of Kobe,—ss:

I, the undersigned, Consul of the United States of America, do hereby certify the foregoing to be a true and faithful copy of the original record preserved in the archives of this Office.

Given under my hand and official seal this 30th day of December, 1919.

(Seal) (Signed) EUGENE H. DOOMAN,
Consul of the United States of America.

Service No. 3036.

Copy.

DIVISION OF OPERATIONS.
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.
SAN FRANCISCO, CALIF.
S. S. "WEST INSKIP."

TO WHOM IT MAY CONCERN:

The following is a copy of the Abstract of Log of the S. S. "WEST INSKIP" from 2:45 P. M., December 14, 1919, to 11:40 A. M., December 16, 1919, covering the period this vessel was rendering assist-

ance to the S. S. "DEUEL" while that vessel was aground on Kamegi Reef.

ABSTRACT.

DECEMBER 14, 1919.

- 2:45 P. M. Altered course to 330 degrees true, to assistance of S. S. "DEUEL."
- 3:48 P. M. Slow ahead.
- 3:49 P. M. Stop. Lowered boat and took soundings.
- 4:04 P. M. Slow ahead.
- 4:06 P. M. Stop.
- 4:10 P. M. Half astern.
- 4:11 P. M. Stop.
- 4:14 P. M. Slow ahead.
- 4:16 P. M. Slow astern. Let go starboard anchor.
- 4:18 P. M. Slow ahead.
- 4:19 P. M. Full astern.
- 4:20 P. M. Full ahead.
- 4:22 P. M. Full astern.
- 4:23 P. M. Slow ahead.
- 4:24 P. M. Half ahead.
- 4:25 P. M. Slow ahead.
- 4:27 P. M. Full astern.
- 4:28 P. M. Slow ahead.
- 4:30 P. M. Half astern.
- 4:31 P. M. Slow astern.
- 4:32 P. M. Stop.
- 6:00 P. M. Two 8" lines from stern made fast to the S. S. "DEUEL." Slow ahead.
- 9:15 P. M. Full ahead—High water.
- 10:06 P. M. Slow ahead.

10:15 P. M. Let go port anchor. 30 fathoms chain.
Kept engines going slow ahead.
Both anchors out.

DECEMBER 15, 1919.

9:35 A. M. Made fast wire hawser from stern of
S. S. "DEUEL."

9:50 A. M. Full speed ahead, high water, attempting to float S. S. "DEUEL."

Coming out of Puget Sound and Westerly courses weather rain and foggy. I found nothing wrong with my compasses. Also on our trips across, which was very stormy and ship continually tossing about I found the compasses acting right till within a thousand miles off Japan Coast, I found a 4' Easterly deviation by Azimuth, but the ship tossing about so bad I could not make sure. The day I came close to the coast I had a short glimpse of the sun and made out a Easterly deviation of 8' on West South West course. I set my compass accordingly but found on making Innuboe Saki light and got same abeam, that I was far East of calculations so I had my doubt about the 8' deviation but still I used it in setting my courses to counteract the current on shore and found my ship about the distance off the headlands that I expected to be in. On swinging around Najuma Saki at 4:30 A. M. December 14th, 1919 and allowing for the current the way it showed on my chart I was set at the rate of three miles per hour nearly opposite the way the current showed on the chart also putting me ten miles ahead of my reckoning and about six miles to the Westward. When off as I supposed was to be Suna Sake and hauled

my ship on a North North East course magnetic, I found that instead of being abreast of Suno Saki I was up passed Tsurugi Saki which showed a red light flashing it seems to us on deck which must have been the red sector. I had bearings of Majima Saki and felt sure of my course, but as the weather was unfavorable with light patches of fog and current setting me at the rate of about three miles per hour Westerly instead of by chart it should have set us North North East about one mile. Consequences were that when I hauled on my North North East course for the Gulf of Tokio my course would not seem to take me clear of land ahead, thinking that my compass still had a large deviation Easterly I kept up to Northward and found myself aground after the ship had been stopped five minutes. Immediately after grounding a message was picked up by the S. S. WEST INSKIP who was leaving Yokohama bound for Kobe and came alongside offering assistance. At high tide December 14th, the above steamer endeavored to pull us off with the help of our own engines, and after trying continuously for one hour we ceased pulling for the night to await high tide the following day. At high tide on December 15th from 10 to 10:45 A. M. the S. S. WEST INSKIP with the help of our own engines kept pulling, but with no success. It was then decided by the Lloyds Surveyor ordered the balance of deckload forward and aft thrown overboard to lighten vessel as quickly as possible. The aforesaid mentioned steamer had been pulling on us for about two hours and at 11:20 A. M. we slid off ground. Arrived inside Yokohama Harbor December 16th and made

fast to buoy at 4:41 P. M. Started discharging Yokohama cargo the following morning and finished same 12:10 P. M. December 19th. Divers were ordered to investigate ships bottom by surveyor which was done the morning of December 18th. Waited for report from divers till late the following day. It was then decided that the report made by the Japanese divers was very unsatisfactory and Lloyds Surveyor made arrangements with the Commander of the U. S. S. BROOKLYN to have his divers investigate. After investigation was made they reported as follows: One hole six feet by twelve feet on port side and one hole five feet by six feet also on port side forward, the first hole mentioned was reported under forepeak tank and *the to* be abaft the collision bulkhead. Lloyds Surveyor ordered the vessel to be drydocked and it was necessary to discharge cargo to lighten ships draft beforehand. Same was done and at 10 A. M. December 22nd with the assistance of *Pilor* and tugs we entered drydocked at 11:56 A. M. after dock was dry and on examination of ships bottom by Lloyds Surveyor, it was found there was only one hole under forepeak tank. It was decided to use a wood patch on above mentioned hole passed with heavy felt, and same being accomplished and inspected by Surveyor came off dock at 10:30 A. M. December 24th. At 1 P. M. same date started loading cargo that discharged to lighten ship Upon completion of same will proceed to Kobe.

WM. REED,
Master.

[Endorsed]: United States District Court. No. 16,853. Miles vs. U. S. Lib. Exhibit No 1. Filed Nov. 5, 1920. Walter B. Maling, Clerk. By Lyle P. Morris, Deputy.

No. 3686. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 13, 1921. F. D. Monekton, Clerk.

